

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

GREENBERRY'S FRANCHISING CORPORATION

Plaintiff,

v.

CIVIL ACTION NO. 3:10cv-00045-NKM

ALICE Y. PARK, et al.,

Defendants.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANT HAN HOLDING, INC.'S MOTION TO DISMISS**

The Plaintiff, Greenberry's Franchising Corporation ("Greenberry's"), by and through its undersigned counsel, files the following Memorandum in Opposition to Defendant Han Holding, Inc.'s Motion to Dismiss.

INTRODUCTION

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Han Holding, Inc., has filed a Motion to Dismiss alleging that the Complaint fails to contain any allegations of wrongdoing on its part.

While Han Holding, Inc, is correct that it is mistakenly identified in various ways in the body of the Complaint, such mistake is a mere clerical error and the Complaint contains sufficient allegations against Han Holding, Inc. such that the Motion to Dismiss should be denied. In the alternative, the Plaintiff has attached an Amended Complaint correcting the misnomers and respectfully seeks leave to file such Amended Complaint should the Court determine that the Complaint is deficient as to Han Holding, Inc.

ARGUMENT

In the opening paragraph of the Complaint, the Plaintiff indicates that it will refer to Defendant Han Holding, Inc. throughout the Complaint as “Han Holding.” Unfortunately, the Plaintiff did not consistently follow its own shortened reference throughout the Complaint. Specifically, in paragraphs 14, 40-46, the Plaintiff uses “Han Holdings.” In paragraphs 49, 50, 53-56, 58- 61, 63, 69-73, 76- 78, 80-82, 84-90, 92-94, 96-99, the Plaintiff uses “Han Enterprises.” While it is obvious that the references to “Han Holdings” and “Han Enterprises” refer to Han Holding, Inc., neither the term “Han Holdings” or “Han Enterprises” are identified and defined in the Complaint.

Construing the Complaint in the light most favorable to the Plaintiff, *Scheuer v. Rhodes*, 416 U.S. 232 (1974), a reasonable review of the Complaint reveals that the mistaken references to “Han Holdings” and “Han Enterprises” actually refer to Han Holding, Inc., the Defendant in this case. Denying the Motion to Dismiss would amount to a mere correction of a misnomer of a party already before the court. Such clerical errors can be corrected. Defendants Han Holding, Inc. cannot plausibly assert that it does not know that the references to “Han Holdings” and “Han Enterprises” refer to it, and, even with these misnomers, Defendant Han Holding, Inc. is clearly on notice as to the allegations and claims asserted by the Plaintiff.

Alternatively, Plaintiff requests that it be permitted to file an Amended Complaint in the form attached hereto as Exhibit 1 pursuant to Rule 15 of the Rules of Civil Procedure. The Amended Complaint simply corrects the mistaken references to “Han Holdings” and “Han Enterprises” and Han Holdings, Inc. is referred to consistently throughout the Amended Complaint as “Han Holding.”

CONCLUSION

The use of “Han Holdings” and “Han Enterprises” is a mere clerical error which has no bearing on the validity of the claims made in this case. Ignoring the misnomers, Defendant Han Holding, Inc., has pointed to no other deficiency in the pleading in this matter, and the Motion to Dismiss should be denied.

Alternatively, this Court should permit Plaintiff to file the attached Amended Complaint under Rule 15.

WHEREFORE, this Court should deny the Motion to Dismiss in its entirety.

Respectfully submitted,

GREENBERRY’S FRANCHISING CORPORATION

By Counsel

/s/ Richard Armstrong

PATRICK C. ASPLIN (VSB #46620)

RICHARD ARMSTRONG (VSB #46053)

NANCY R. SCHLICHTING (VSB #65909)

Of Lenhart Obenshain PC

100 10th Street N.E., Suite 300

Charlottesville, Virginia 22902

(434) 220-6105

(434) 220-6102 (Fax)

pca@lolawfirm.com

rca@lolawfirm.com

nrs@lolawfirm.com

LO.263784.DOC

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2010, I electronically filed the foregoing *Plaintiff's Memorandum in Opposition to Defendant Han Holdings Inc's Motion to Dismiss* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Meghan M. Cloud
McGuire Woods LLP
Court Square Building
310 4th Street, N.E. Suite 300
Charlottesville, VA 22902
Counsel for Defendants Alice Park, Brian Park and GNT Enterprises, Inc.

Peter W. Rim, VSB 41837
Andrew E. Macfarlane, VSB 75144
Attorney for Defendant Anthony D. Han
Lohrmann & Rim, P.C.
7700 Little River Turnpike, Suite 506
Annandale, VA 22003
Counsel for Defendants Anthony Han and Han Holding, Inc.